

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FORTUNE SCHOOLS .

OAH Case No. 2014050360

ORDER DENYING REQUEST TO
UNEXPEDITE HEARING

On May 15, 2014, Student filed a Due Process Hearing Request (complaint) against Fortune School (Fortune). On May 20, 2014, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set this matter on a dual calendar, with the expedited matter being set for hearing on June 10 through 12, 2014.

On May 28, 2014, the parties filed a stipulation seeking to vacate the expedited hearing dates in this matter on the grounds that Student's complaint does not seek an expedited hearing and, Student has dis-enrolled from Fortune and does not seek to reenroll in Fortune.

APPLICABLE LAW

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

DISCUSSION

Here, Student's complaint raises two issues with multiple sub-issues. Student's Issue 2(c) states that Fortune has constructively expelled Student "without convening a

manifestation determination IEP [individualized education program] team meeting.” This issue falls squarely within the language of 20 U.S.C. § 1415(k)(3) which triggers the expedited hearing process. OAH has no discretion to deem the matter unexpedited simply because the parties’ stipulate that it is so. So long as Student has raised the issue of Fortune’s failure to convene a manifestation determination meeting, or has alleged that Fortune changed Student’s placement due to disciplinary measures without a manifestation determination, OAH must conduct an expedited hearing. Should Student withdraw her issues that trigger the provisions of 20 U.S.C. § 1415(k)(3), OAH can consider vacating the expedited hearing dates in this matter.

Accordingly, the parties stipulated request to deem this matter unexpedited is denied. All prehearing conference and hearing dates for the expedited portion of this case are confirmed.

ORDER

1. The request to unexpedite the hearing is denied.
2. The expedited portion of this matter shall proceed as scheduled: prehearing conference on June 2, 2014, at 3:00 p.m.; and, due process hearing on June 10 through 12, 2014, and continuing day to day, Monday through Thursday, at the discretion of the Administrative Law Judge.

DATE: May 29, 2014

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings